

MADISON D. LOCKE

IBLA 2000-259

Decided April 26, 2001

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring two mining claims null and void ab initio in part. NMC 800403 and -04.

Affirmed as modified.

1. Mining Claims: Lands Subject to

A BLM decision declaring mining claims null and void ab initio on the basis that they conflict with previously-issued material site rights-of-way will be affirmed where the record contains information showing the extent of the rights-of-way and confirming the conflicts with the mining claims, and where the claimant fails to substantiate his assertion that one of the claims is a relocation of a claim predating the issuance of the conflicting right-of-way either on appeal or before BLM.

APPEARANCES: Madison D. Locke, pro se.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Madison D. Locke (appellant) has appealed the April 4, 2000, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring the Field No. 1 (NMC 800403) and the Field No. 2 (NMC 800404) placer mining claims null and void ab initio in part.

Appellant filed copies of notices of location for these claims (among others) on February 12, 1999. Field No. 1 is described therein as situated in the N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, sec. 32, T. 13 N., R. 67 E., Mount Diablo Meridian (also referred to as "M.D.B. & M."); Field No. 2 as situated in the S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, sec. 33 in the same township. The date of location for both claims was November 27, 1998. Appellant subsequently timely filed a maintenance fee payment waiver certification and copies of assessment work affidavits and filing fees.

On December 9, 1999, BLM issued a decision declaring the two claims null and void ab initio in part. It appears that service of that decision document on appellant was not completed. Accordingly, on April 4, 2000, an identical decision was issued. Receipt of that decision at appellant's

address of record was accomplished on April 7, 2000. Appellant transmitted a notice of appeal to BLM on May 4, 2000, thus perfecting his appeal to this Board.

BLM's decision states as follows:

Your unpatented mining claims identified as Field No. 1 (NMC 800403) and Field No. 2 (NMC 800404) located November 27, 1998, are hereby declared null and void ab initio in part. This decision applies to your claims which are located in the following described lands:

Mount Diablo Meridian, Nevada

T. 13 N., R. 67 E.,

sec. 32, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$. (NEV-067011) [1]

sec. 33, N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$. (N 7204) [2]

The lands listed above are held by the Federal Highway Administration [(FHA)] under Material Site Rights of Way NEV-067011 dated January 13, 1967, and N-7204 dated November 15, 1972. Lands which are appropriated and transferred to the State Highway Administration as a material site are not open to mineral entry or location.

(BLM Decision at 1.)

In his statement of reasons for appeal (SOR), appellant sets out the land descriptions in BLM's decision (quoted above) and states as follows:

Field No. 2 is not located in the above mentioned lands so I see no reason to declare it null and void. Field No. 2 is located at T13N, R67E, Sec. 33, S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, which is contiguous to but lies directly south of N-7204. There is no conflict here.

(SOR at 1.)

1/ "NEV-067011" is a reference to a material site right-of-way held by the State of Nevada, dating from January 1967. The land description preceding that reference accurately describes the extent of that right-of-way, according to documentation in BLM's case record.

2/ "N-7204" is a reference to a second material site right-of-way held by the State of Nevada, dating from November 1972. The land description preceding that reference apparently attempts to describe the extent of that right-of-way. However, as discussed below, the description in BLM's decision is not accurate, according to other documentation in BLM's case record.

[1] The confusion here appears to arise because BLM's decision incorrectly describes the lands covered by material site right-of-way N-7204. The case record contains a "map" for that right-of-way, "showing a parcel of public lands requested to be reserved from entry as a source of materials for use on a Federal Aid Highway * * * consisting [in part] of the S $\frac{1}{2}$ of the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ * * * of Section 33, T. 13 N., R. 67 E., M.D.B. & M." ^{3/} Thus, BLM's decision incorrectly describes those lands as the "N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ " instead of the "S $\frac{1}{2}$ N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$." ^{4/}

However, it is unnecessary to set aside BLM's decision, because (contrary to appellant's contention on appeal) it is clear from the record that there is a conflict between right-of-way N-7204 and the Field No. 2 claim in that they both cover the S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 33. A mining claim located on lands subject to a valid, ongoing, and pre-existing material site granted pursuant to the Federal Highway Act is null and void ab initio. Paul Tobeler, 133 IBLA 361, 362 (1995); Ralph Memmott, 61 IBLA 116 (1982); James F. Pepcom, 50 IBLA 414 (1980); Sam D. Rawson, 61 I.D. 255 (1953); see United States v. Johnson, 39 IBLA 337, 372 (1979). The S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 33, having previously been reserved from entry as a source of materials for use on a Federal Aid Highway and leased to the State of Nevada under right-of-way N-7204, was not open to mineral entry in November 1998.

In his SOR, appellant states that "[t]he East half of Field No. 1 is located on NEV-067011 but the location monument is outside of NEV-067011 so I believe the West half of Field No. 1 should be valid." (SOR at 1.)

The record also contains a "map" for right-of-way NEV-067011 "showing a parcel of public lands requested to be reserved from entry as a source of materials for use on a Federal Aid Highway * * * consisting [in part] of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ * * * of Section 32, T. 13 N., R. 67 E., M.D.B. & M." ^{5/} While we agree that there is no conflict with the west half of the Field No. 1 claim, it is clear that there is a conflict between right-of-way NEV-067011 and the Field No. 1 claim in that they both cover the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of sec. 32. That parcel, having previously been reserved from entry as a source of materials for use on a Federal Aid Highway and leased to the State of Nevada under right-of-way NEV-067011 was also not open to mineral entry in November 1998.

^{3/} The remainder of material site right-of-way N-7204 is in the SE $\frac{1}{4}$ of sec. 33 and is clearly not covered by either mining claim at issue herein.

^{4/} BLM's decision is hereby modified to reflect the correct description.

^{5/} The remainder of original material site right-of-way NEV-067011 was in the NE $\frac{1}{4}$ of sec. 32 and was relinquished in February 1973. Neither of the two mining claims at issue is situated in the NE $\frac{1}{4}$ of sec. 32.

Appellant states: "Field No. 1 is a relocation of a mining claim that was valid on January 13, 1967 when the [FHA] appropriated the land described as NEV-067011. I therefore believe NEV-067011 to be invalid and that the East half of Field No. 1 should be valid." (SOR at 1.) It is well established that, in order to prevail in such showing, appellant must establish that he is the successor to an interest in mining claims located on this land before its withdrawal from mineral entry in 1967, as claims which are located on land which is withdrawn from mineral location are null and void ab initio. William H. Nordeen, 129 IBLA 369, 371 (1994); Gary Hoefler, 127 IBLA 211, 215 (1993); Patsy A. Brings, 119 IBLA 319, 325 (1991); Jack T. Kelly, 113 IBLA 280, 283 (1990); Russell Hoffman (On Reconsideration), 87 IBLA 146, 148 (1985); American Resources, Ltd., 44 IBLA 220, 222 (1979); Gerald Byron Bannon, 40 IBLA 162 (1979); Janelle R. Deeter, 34 IBLA 81, 83 (1978); Leo J. Hottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenheizer v. Udall, 432 F.2d 328 (9th Cir. 1970); However, appellant has filed nothing (either with BLM or on appeal) showing that the Field No. 1 claim was located any earlier than November 27, 1998, or that the claim is a relocation of any previous claim predating the issuance of right-of-way NEV-067011. In such circumstances, BLM's decision to declare that claim null and void ab initio insofar as it conflicts with that right-of-way is properly affirmed. See Steven A. Beld, 136 IBLA 142, 145 (1996); American Resources, Ltd., 44 IBLA at 222.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed as modified.

David L. Hughes
Administrative Judge

I concur:

Bruce R. Harris
Acting Chief Administrative Judge

